

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 687 of 1997

with

SPECIAL CRIMINAL APPLICATION No 753 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

JASHVANTLAL MAGANLAL MODI

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

MR.SA PANDYA A.P.P. for Respondent No. 1

MESSRS IM PANDYA & SHAH for Respondent No. 2

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 27/06/97

ORAL JUDGEMENT

Both these applications are preferred by original accused of Criminal Cases Nos.582 of 1996 and 772 of 1996. The record shows that criminal proceedings have been initiated by the present appellant under Sections 420, 406, 465, 467, 468, 471 read with Section 114 of the Indian Penal Code, 1860 (the IPC for brief) on the allegation that the appellant tried to forge documents with a view to get transferred shares worth Rs.1,85,000 approximately in his name without consent of the owner, namely, the complainant. During the pendency of these petitions, the petitioner intended to leave territory of India. However, on applications moved by the original complainant, the court below vide order dated 17.6.1997 restrained him from leaving territory of India till the criminal complaint initiated by the original complainant Mr. Ashokkumar Pranlal Dhudhia in the Court of the Metropolitan Magistrate, Ahmedabad is disposed of. As a sequence thereof, his passport has also been seized by the Immigration Inspector. Aggrieved by these developments, the petitioner has preferred both the above applications. Vide Application No.687 of 1997 the petitioner has challenged the action of seizing the passport by the Immigration Inspector, as being arbitrary, without jurisdiction and illegal and has prayed for appropriate directions for release of passport. Vide Application No.753 of 1997, the petitioner has challenged legality of the impugned order dated 17.6.1997 vide which he has been restrained from leaving territory of India.

2. Before I deal with rival contentions qua merits of these applications, it would be worthwhile to deal with some of the important facts. As per the allegations, the petitioner - original complainant tried to forge some documents with a view to see that shares worth Rs.1,85,000/- approximately belonging to the original complainant Ashokkumar Pranlal Dhudhia were tried to be transferred either in his name or someone else's name. The record shows that shares have not been

transferred and have been seized and are lying in the custody of the investigating officer. Apart from the fact of commission of offence as alleged, the fact remains that the subject-matter of the offence, namely, security, that is, share certificates, has not been destroyed and/or the ownership is not transferred and still the original complainant remains as exclusive owner thereof. That the parties are closely related is also not in dispute.

3. There is no dispute that, on the strength of complaint, investigation was carried and chargesheets have been filed and are awaiting turn for final hearing. The cases are registered in 1996. In both these cases, neither the plea of the accused has been recorded nor witness summons have been issued. Thus, the cases are pending in the court as if they are lying on dormant file.

4. Coming to merits, Mr.Saiyed for the petitioner has vehemently argued that one of the daughters is staying in U.S.A. and is not keeping good health and is required to go there to meet her. He further states that his wife has already gone and is now staying with his daughter. A statement is also made that the petitioner intends to visit U.S.A. for a short period of 120 days only, though the VISA has been granted upto 2002. In this background it is argued that, even if the petitioner is permitted to leave territory of India, he will be returning after 120 days whereby trial of the accused would not be adversely affected. He has also argued that he has immovable properties worth about Rs.20 lakhs and a running business in the name of 'P.J.Anajwala'. Thus, the petitioner would come back and there are no chances of permanently leaving with the object of frustrating the criminal proceedings. As against that, Messrs Pandya and Shah for the original complainant have argued that the only intention which can be culled from the prevailing circumstances on the part of the petitioner or original accused is to leave India permanently with a view to frustrate criminal proceedings initiated against him. It is further argued that the petitioner has not come with clean hands and has not placed true and correct facts before the court with regard to the purpose of visiting U.S.A., the period of stay and the background in which VISA came to be granted, and thus have prayed for dismissal of both these petitions.

5. I have heard learned advocates and perused the impugned order. It is true that a criminal case is pending wherein the petitioner is an accused. The

learned Judge while passing the impugned order has been weighed with the pendency of both the criminal cases. The only fact which has appealed to the learned Judge is that the petitioner may leave the country permanently with a view to frustrate the pending criminal proceedings. On facts, the learned Judge ought to have considered that the petitioner has a large family, immovable property and running business. It has come on record that the petitioner does not have any establishment or business or property in U.S.A. except that his married daughter is staying there. It has also come on record that he would be leaving behind his married son, immovable property and running business. No cogent circumstances are shown which can lead the court to draw inference about his intention of permanently leaving this country. The cases pending are not so grave that one would be prompted to leave this country leaving behind immovable properties, running business and family members. Therefore, in my view, the apprehension that the petitioner would be leaving permanently is misplaced and is without any basis.

6. The second apprehension that by his leaving this country the proceedings would be delayed also finds no place for consideration in light of pendency of cases in the trial court as well as age of cases instituted. It is an admitted fact that the cases have been registered in the year 1996. Even a judicial notice can be taken that the courts below will not be able to try said cases within couple of years since many other old similarly situated cases are pending awaiting turn for trial in regular course. It is needless to say that even other cases of grave nature involving serious offences are also pending, yet owing to large number of pendency the courts below have not been able to try and dispose them of within a short time. During the course of arguments, a statement is also made that at present also the matters are adjourned by giving adjournment of about one month. If plea is yet to be recorded and summons are yet to be issued, I do not find any possibility that the cases are likely to be tried and disposed of within two - three months. If that be so, even if the petitioner is permitted to leave the country for a short period of 120 days, no prejudice would be caused to the pending proceedings.

7. By making the above observations I do not mean that, irrespective of gravity of offence, family background and other circumstances, in all cases an accused should always be permitted to leave territory of India. However, in peculiar facts and circumstances of

this case, some strict conditions can be imposed while permitting the petitioner to leave territory of India. The record shows that the petitioner has been released on bail on furnishing surety of Rs.5000/- only. To counter the apprehension expressed by the complainant, number of sureties and amount can be enhanced. Similarly, as the petitioner is having immovable properties, he can be put to terms during pendency of trial. In addition thereto, he can also be directed to deposit some amount in cash. With imposition of such conditions, in my view, the petitioner would not be able to jump the bail as is apprehended by Messrs Pandya and Shah and/or to frustrate the pending proceedings.

8. Apart from the pending of criminal proceedings against the petitioner, it has also come on record that two suits have already been filed by the complainant against the petitioner. One may also argue that, in the event of a decree being passed and if the petitioner leaves the country, then the decrees can not be executed. Thus, object of filing suits would be frustrated and the anticipated decree would merely remain on a piece of paper. In my view, such apprehension can be taken care of by creating an embargo against transfer of immovable property of which admittedly the petitioner is the owner as is borne out from the certificate issued by the office bearers of the cooperative society where the property is situated. The original certificate issued by the Vice Chairman, Neminath Nagar Co.Op.Housing Society Ltd. and a xerox copy of the Registration Certificate under the Bombay Shops and Establishment Act are placed on record.

9. Keeping all these factors in mind, the petitions deserve consideration. I therefore pass the following order:

Both the petitions are allowed on following conditions:

- (i) the petitioner shall file an undertaking before this court that he will return from abroad between 90 - 120 days from the date of leaving this country;
- (ii) he should furnish two sureties of Rs.20,000/- (twenty thousand) each and personal bond in the like sum in any one of the criminal cases pending before the trial court;

(iii) The petitioner is directed to furnish
an undertaking that the immovable
property being tenement No.9 situated in

Neminath Nagar Co. Op. Housing Society
Ltd., Ambavadi, Ahmedabad shall not be
transferred, mortgaged or alienated or
create any encumbrance in any manner till
his return from abroad. Such undertaking
shall be filed in this court duly signed
by the petitioner and a copy whereof
shall also be produced in the pending
civil suits.

(iv) Before leaving for abroad, the petitioner
shall furnish his complete address in
trial court proceedings of his stay in
USA.

10. From the record it transpires that the passport
of the petitioner was seized by the Immigration Inspector
in light of the order passed by the court below
restraining him from leaving territory of India. Since
by the aforesaid order of mine the petitioner has been
permitted to leave territory of India, the Immigration
Inspector shall have no jurisdiction to seize the
passport. Consequently, the action of the Immigration
Inspector would now be illegal and deserves to be quashed
and set aside. Under these circumstances, the
Immigration Inspector who seized the passport of the
petitioner is now directed to hand over the passport to
the petitioner. After seizure if at all he has parted
with the passport to any other authority, the Immigration
Inspector shall get back and hand over it to the
petitioner within four days from the date of service of
copy of the order passed by this court. Both the
petitions stand disposed of. Rule made absolute
accordingly. Direct Service is permitted.

11. Request for staying of operation of the order
with a view to enable him to approach the Supreme Court
is rejected as no question of law is involved.

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